IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 32200 of 2006(G)

PETITIONER:

C.A. KOCHUMOHAMMED,
S/O. LATE ANTHU PILLAI, AGED 59 YEARS,
FOREMAN, FROZEN STORAGE, M.P.E.D.A,
COCHIN-3, NOW AT HEAD OFFICE M.P.E.D.A. HOUSE,
PANAMPILLY AVENUE, COCHIN-36.

BY ADV. SRI.T.A.NARAYANAN NAIR

RESPONDENTS:

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1. THE MARINE PRODUCETS EXPORT
DEVELOPMENT AUTHORITY, REPRESENTED BY ITS
SECRETARY, M.P.E.DA HOUSE,
PANAMPILLY AVENUE, COCHIN-36.

2. SRI.SIMON JOHN, JOINT DIRECTOR (TRG)
AND SECRETARY IN CHARGE OF THE MARINE PRODUCTS
EXPORT DEVELOPMENT AUTHORITY, M.P.E.D.A. HOUSE,
PANAMPILLY AVENUE, COCHIN-36.

3. SRI.G. MOHANKUMAR, I.A.S., CHAIRMAN
THE MARINE PRODUCTS EXPORT DEVELOPMENT
AUTHORITY, M.P.E.D.A. HOUSE, PANAMPILLY AVENUE,
COCHIN-36.

4. SRI. TATHAGATA SATHPATHY M.P.
MEMBER OF PARLIAMENT (LOK SABHA)
107, SURYA NAGAR, BHUBANESWAR-751 003, ORISSA.

5. SRI.C.V. HARI RAMAYOGAIAH. M.P.,
MEMBER OF PARLIAMENT (LOK SABHA)
173, NEW MLA QUARTERS, ADARSANAGAR,
HYDERABAD, ANDHRA PRADESH.

6. SRI.R.M. MISHRA, DIRECTOR,
DEPARTMENT OF COMMERCE, MINISTRY OF
COMMERCE AND INDUSTRY, ROOM NO.280-A,
UDYOG BHAVAN, NEW DELHI-110 011.

7. SRI.V.D. ALAM, DIRCTOR (FINANCE)

MINISTRY OF COMMERCE AND INDUSTRY
ROOM NO.224, UDYOG BHAVAN,
NEW DELHI-110 011.

8. SRI.C.J. VENUGOPAL, I A S,
COMMISSIONER-CUM-SECRETARY,
FISHERIES AND A.R.D. DEPARTMENT,
SECRETARIAT, GOVT.OF ORISSA,
BHUBANESWAR-751 001.

9. SRI.JANAK DIGAL, I.A.S.,
DEVELOPMENT COMMISSIONER-CUM-SECRETARY
(FISHERIES) A AND N ADMINISTRATION, SECRETARIAT,
PORT BLAIR-744 101, ANDAMAN & NICOBAR ISLANDS.

10. SMT.LEENA MEHENDALE, I A S.,
PRINCIPAL SECRETARY (ADF) AGRICULTURE,
ANIMAL HUSBANDRY DAIRY DEVELOPMENT AND
FISHERIES DEPARTMENT, 5TH FLOOR, ROOM NO.513
(ANNEX), MANTRALAYA, MUMBAI-400 032.

11. SRI.TARA RANJAN PATNAIK,
CHAIRMAN, M/S.FALCOM MARINE EXPORTS LTD.,
A-22, 1ST FLOOR, FALCON HOUSE,
CUTTACK ROAD, BHUBANESWAR-751 006.

12. SRI.T. REGHUNATH REDDY,
MANAGING DIRECTOR, M/S.SUVARNA REKHA
EXPORTS PVT.LTD., OCEAN PARK APARTMENT,
BEACH ROAD, MAHARANIPETA,
VISAKHAPATANAM-530 002.

13. SRI.R. MUTHU, CHAIRMAN,
M/S.AGRI MARINE EXPORTS LTD.,
NO.224, T.T.K. ROAD, ALWARPET, CHENNAI-60018.

14. SRI.ELIAS SAIT,
CHAIRMAN & MANAGING DIRECTOR
M/S.ALSA MARINE & HARVESTS LTD.,
FLAT NO.F2, 2ND FLOOR, T-10, 1ST FLOOR,
4TH MAIN ROAD, ANNA NAGAR, CHENNAI-600 040.

15. SIR.A.J. THARAKAM, PRESIDENT, SEAI,
M/S.AMALGAM FOODS LTD., AMALGAM HOUSE,
NO.9, BRISTO ROAD, WILLINGDON ISLAND,
COCHIN-682 003.

R1 TO 3 BY BY SC SHRI. JOSEPH MARKOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C) No.32200 OF 2006 G
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Dated this the 14th December, 2006

J U D G M E N T

The petitioner belongs to the post of Foreman in the service of the 1st respondent. He challenges Ext. P10 order passed by the 2nd respondent. The said order has been passed pursuant to the decisions of this Court in which the petitioner as well as the 1st respondent were parties. Ext. P10 says that the petitioner is not qualified for the post of Deputy Director in the 1st respondent-Authority. It is pointed out that the essential qualification prescribed is a Bachelor's degree in Mechanical/Electrical/Refrigeration Engineering or equivalent and 4 years experience in refrigeration works. The respondents have taken note of the fact that the petitioner is a diploma holder. The question of granting relaxation from qualification also has been considered. For reasons stated in Ext. P10, the 1st respondent felt that relaxation from qualification need not be granted.

2. The petitioner challenges Ext. P10 order as arbitrary and illegal.

3. Heard Shri. T.A.Narayanan Nair for the petitioner and Shri. Joseph Markos for the 1st respondent.

4. While disposing of W.A. No. 902 of 2003 filed by the 1st respondent wherein the petitioner herein was the sole respondent, the Division Bench held in the operative part of the judgment, inter alia, as follows:

> "We are of the considered view that the learned single Judge has exercised the discretion properly and in accordance with law and having due regard to the entire facts and circumstances of the case. We do not find any illegality with the same and are therefore, not inclined to interfere. In our considered view, it is the situational requirement of justice and fair play that the appellant Authority has to act in terms of the views expressed by learned single Judge in the impugned judgment."

In Ext. P7 judgment the following observations were made:

> "Learned Standing Counsel appearing for the respondent, submits that there is no stagnation and after completing 18 years of service the petitioner is in the scale of the Assistant Director and on 25 years he would be put in the scale of Deputy Director. But that is a time bound grade promotion, retaining him in the same post. The posts admittedly being transferrable, the petitioner should not have been denied a chance for aspiring for promotion along with his peers for higher posts in other Channels, as otherwise by the time a person is eligible

> for being considered for promotion to higher posts in a particular channel, the best way to deny him that opportunity is to transfer him to another Channel where there is no chance for promotion. Such an approach would be patently discriminatory, arbitrary and unreasonable. Petitioner is entitled for equal treatment with his peers. There is also no basis for the contention that at the time the petitioner joined as Foreman in Channel IV - Frozen Storage, the standing instructions at that time also provided that the higher post of Deputy Director was to be filled up only by direct recruitment. As already observed, the posts being transferrable to other Channels, petitioner should not have been denied an opportunity to compete with his peers for promotion to higher posts. In the above circumstances, the respondent has to consider the case of the petitioner for promotion to higher posts subject of course to his qualification and eligibility."

A perusal of Exts. P7 and P8 shows that the 1st respondent has not considered the claim of the petitioner for relaxation from qualification using the inputs referred to in Ext. P7 or factors made mention in Ext. P7, as relevant. Hence, I am of the view that this is a matter which requires reconsideration by the 1st respondent strictly in terms of the observations made by this Court in Ext. P7 judgment which has been affirmed by the Division Bench vide Ext. P8 judgment.

5. In the above view of the matter I do not

consider it necessary to issue notice to respondents 2 to 15.

6. Ext. P10 is set aside so as to enable the 1st respondent to reconsider the matter in the light of the observations made in Ext. P7 in the sense that all aspects made mention in Ext. P7 shall be considered, for, the Division Bench has observed that the learned single Judge had exercised the discretion properly and in accordance with law and having due regard to the entire facts and circumstances of the case. The re-consideration shall be done as expeditiously as possible, at any rate within six weeks on the petitioner producing a copy of the judgment.

The writ petition is disposed of as above.

K.K. DENESAN
JUDGE

jan/